

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Orig re/affidavit of mailing

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pgs*

75-1291

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1291

UNITED STATES OF AMERICA,

Appellee,

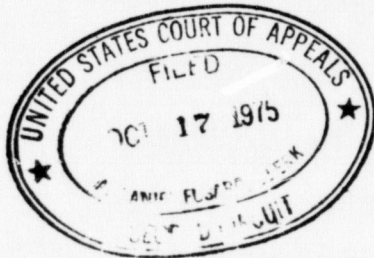
—against—

VIRGIL P. RIVERS, JR., and
EDWARD T. COPELAND,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX



DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*

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INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

A 1



Place New York, New York
 Date 7/27/74
 Time 8:50 AM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed

Vincent P. [Signature]

Witness:

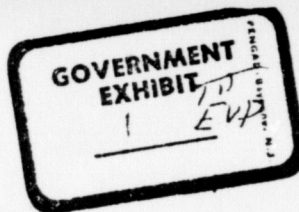
William J. Auger, SA, FBI, NY, NY 7/27/74

Witness:

P. J. Mitchell, SA, FBI NY, NY 7-27-74

Time:

8:55 pm



A

2

Arrest and Interview log of Virgil P. Rivers, Jr. on July 27, 1974, at New York, New York

8¹⁵P Rivers advised of official identities of Special Agents William J. Augustitis and Phillips Mitchell at the 112th Pct. Queens, New York, and that he was under arrest for bank robbery.

8¹⁹P Rivers advised of his rights as stated on the "Interrogation, Advice of Rights" form orally by Special Agent Augustitis.

8²⁰P Rivers transported by Bureau automobile to FBI Office 201 East 69th Street, New York, New York.

8⁴¹P Rivers stated he was hungry so hamburger, french fries and milk shake purchased for him at M^cDonalds, 70th Street and Second Avenue, New York, New York.

8⁴²P Arrival at FBI Office and Rivers taken to 7th floor for interview and processing.

8⁵⁰P Rivers advised of his rights as stated on the "Interrogation, Advice of Rights" form by SA Augustitis and is given form to read.

8⁵⁵P Rivers reads rights form, states he understands his rights, and is willing to answer questions.

8⁵⁸P Rivers allowed to eat his hamburger and fries.

9¹⁰P Interview begins with Rivers admitting participation in robbery of First National City Bank 8115 Flatlands Avenue, Brooklyn, New York, on July 15, 1974.

9³⁰P Rivers agrees to furnish signed statement and signed statement is prepared.

10⁰⁵/P Rivers furnished with "Interrogation; Advice of Rights" form on which signed statement is started to read.

10¹⁰/P Rivers finishes reading signed statement and signs "Rights" form and statement.

10¹²₃₅/P Rivers is fingerprinted

10³⁵/P Rivers is transported to Federal House of Detention, New York, New York in Bureau automobile

11⁰⁰/P Rivers given to custody of Federal House of Detention New York, New York.

William J. Augustitis, SA, FBI, NY, NY 7/27/74

Pat Mitchell, Jr., SA, FBI, NY, NY 7-27-74

MM/nc
Laml

3

1 THE COURT: Everybody ready?

A

4

2 MS. MOSKOWITZ: Ready.

3 MR. CORBETT: Ready.

4 MR. LEVIN-EPSTEIN: Ready.

5 THE COURT: Do you wish a hearing at this
6 time?

7 MR. CORBETT: We do.

8 MR. LEVIN-EPSTEIN: I have discussed with
9 defense counsel, with regard to their respective
10 clients, motions they wish made and motions they
11 would like to have a hearing on.

12 The Government is ready to call as its first
13 witness, with reference to certain statements that the
14 defendants made, Special Agent Augustitis.

15 W I L L I A M A U G U S T I T I S ,

16 called as a witness herein, having been first duly
17 sworn by the Clerk of the Court, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LEVIN-EPSTEIN:

21 MS. MOSKOWITZ: If there are any other witnesses
22 in the courtroom, I ask that they be excluded.

23 MR. LEVIN-EPSTEIN: I see no other government
24 witnesses, your Honor.

25 THE COURT: All right.

Augustitis - direct

4

1
2 Q Would you state your full name for the record.

3 A William J. Augustitis.

4 Q Are you employed?

5 A Yes.

6 Q What is your occupation?

7 A Special Agent with the FBI.

8 Q How long have you been so employed?

9 A Six years.

10 Q Could you tell us what your current assignment
11 with the FBI is?

12 A Bank Robbery Squad, New York Office.

13 Q How long have you been so assigned?

14 A Approximately two years.

15 Q Directing your attention to July of 1974, were
16 you assigned to the Bank Robbery Squad at that time?

17 A Yes.

18 Q Specifically directing your attention to July
19 15 of 1974, did there come a time on that date when you
20 participated or initiated in the investigation of a particular
21 bank robbery?

22 A Yes.

23 Q What bank was that?

24 A First National City Bank, 8115 Flatlands Avenue
25

1
2 in Brooklyn.

3 Q As a result of that investigation did there come a
4 time when you personally made any arrests?

5 A Yes.

6 Q Tell us whom you arrested.

7 A I arrested Virgil P. Rivers, Jr. and Edward
8 T. Copeland.

9 Q Do you see them in the courtroom today?

10 A Yes.

11 Q Would you point them out, please --

12 MR. LEVIN-EPSTEIN: May the record indicate
13 that the witness pointed out the two defendants sitting
14 at counsel table.

15 Q Drawing your attention --

16 THE COURT: Are you pointing out the two
17 defendants?

18 THE WITNESS: Yes.

19 MR. CORBETT: Identifications conceded.

20 MR. LEVIN -EPSTEIN: May I proceed?

21 THE COURT: Yes.

22 BY MR. LEVIN-EPSTEIN:

23 Q Directing your attention specifically to July
24 27th, 1974, were you working on that day?

25 A Yes.

Q Did there come a time on that day when you met with the defendant Rivers?

A Yes.

Q Approximately what time was that, sir?

A It would be around 8:00 p.m.

Q Did you prepare -- withdrawn.

MR. LEVIN-EPSTEIN: May this document be marked for identification, your Honor.

THE CLERK: Document marked for identification as Government's Exhibit 1.

(So marked.)

MR. LEVIN-EPSTEIN: For purposes of the suppression hearing.

THE COURT: All right.

BY MR. LEVIN-EPSTEIN:

Q Did you prepare a report or note of any kind when you met with the defendant Rivers at that time?

A Yes.

Q Are you familiar with the phrase "Arrest and Interview Log"?

A Yes.

Q I show you Government's Exhibit 1 for identification and ask you if you can identify that document?

A Yes.

1
2 Q Please tell us what that is.

3 A It is the Arrest and Interview Log on Virgil
4 P. Rivers, Jr. on July 27, 1974.

5 THE COURT: July what?

6 THE WITNESS: July 27.

7 Q Can you tell us approximately what time you
8 met with Rivers on that day?

9 A Approximately 8:15 p.m.

10 Q Did you speak with him at that time?

11 A Yes.

12 Q Would you please tell the Court what you
13 said to Mr. Rivers when you first met with him?

14 A I advised him of my official identity and the
15 other agent who was with me and advised him he was under
16 arrest for bank robbery.

17 Q Who else was present with you, sir?

18 A Special Agent Phillips Mitchell.

19 Q After you told Mr. Rivers that he was under
20 arrest for bank robbery, did you have occasion to speak with
21 him further?

22 A Yes.

23 Q What did you say to him?

24 A I advised him of his rights orally.

25 Q How did you do that?

Augustitis - direct

8

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2 A I read the rights from the prepared "Advice of
3 of Rights Form."

4 MR. LEVIN-EPSTEIN: May I have this document
5 marked for identification.

6 THE CLERK: Document marked for identification
7 as Government's Exhibit 2.

8 (So marked.)

9 BY MR. LEVIN-EPSTEIN:

10 Q Agent Augustitis, I show you Government's
11 Exhibit 2 for identification and direct your attention solely
12 to the printed portion of the document, not anything that
13 is written in hand or pen.

14 Do you understand?

15 A Yes.

16 Q I ask you: Do you recognize the from?

17 A That's the form, yes.

18 Q Would you be more specific and tell us exactly
19 what you mean?

20 A The interrogation Advice of Rights Form that
21 we use to advise people of their constitutional rights.

22 Q Did you read from that form to Mr. Rivers?

23 A Yes.

24 Q Please read to us what it is you read to
25 Mr. Rivers at that time.

Augustitis - direct

1
2 A "Before we ask you any questions, you must
3 understand your rights.

4 "You have the right to remain silent.

5 "Anything you say can be used against you in
6 court.

7 "You have the right to talk to a lawyer for
8 advice before we ask you any questions and to have
9 him with you during questioning.

10 "If you cannot afford a lawyer, one will be
11 appointed for you before any questioning, if you wish.

12 "If you decide to answer questions now without
13 a lawyer present, you will still have the right to
14 stop answering at any time.

15 "You also have the right to stop answering
16 at any time until you talk to a lawyer."

17 Q An approximately what time was it that you
18 read that form?

19 A Approximately 8:19.

20 Q You are being very exact when I ask you a time.
21 For example, you give me 8:19. Is that an independent
22 recollection or are you referring to something?

23 A I am referring to the Arrest and Interview
24 Log.

25 Q Was that prepared shortly after this interview?

Augustitis - direct

10

1
2 A Yes.

3 MR. LEVIN-EPSTEIN: I offer this exhibit into
4 evidence for purposes of suppression.

5 MS. MOSKOWITZ: May I see it.

6 (Document exhibited to defense counsel.)

7 MR. LEVIN-EPSTEIN: I offer it in evidence,
8 your Honor.

9 THE COURT: Mark it.

10 THE CLERK: Government's Exhibit 1 previously
11 marked for identification, now marked in evidence.

12 (So marked.)

13 BY MR. LEVIN-EPSTEIN:

14 Q I now hand back what now has been marked
15 Government's Exhibit 1 in evidence, Agent Augustitis.

16 Now, when you finished reading this form
17 to Mr. Rivers, what, if anything, did he say to you?

18 A He stated he understood his rights.

19 Q Did he sign anything at that time?

20 A No, Sir.

21 Q What happened after you advised Mr. Rivers
22 of his rights and he stated he understood them, orally?

23 A We transported him to the FBI Office in
24 Manhattan.

25 Q You transported him?

2 A Yes.

3 Q Were you accompanied by another agent?

4 A Yes.

5 Q Who was the other agent?

6 A Special Agent Mitchell.

7 Q What time was that when you began the trans-
8 portation of the subject?

9 A Approximatley 8:20.

10 Q During the trip between the location where
11 you first met with Mr. Rivers and the FBI Headquarters --
12 where is the Headquarters located?

13 A 201 East 69th Street.

14 Q Did you travel in a motor vehicle?

15 A Yes, a Bureau automobile.

16 Q During the trip did Mr. Rivers say anything
17 to you?

18 A He stated that he knew why he had been arrested
19 and then we said that we would talk about it later.

20 Q Did you have occasion to say anything to him at
21 that point?

22 A I told him we would talk about it when we got
23 back to the office.

24 Q Did you have occasion to say anything else
25 to him, specifically I am directing your attention to a

1
2 matter not related in the case.

3 A THE fact that he was hungry and we were hungry
4 and we asked him if he wanted something to eat.

5 Q What did he say?

6 A He said yes.

7 Q What -- as a result of him saying he was
8 hungry, did you do?

9 A We stopped at McDonalds' at 70th Street and
10 Second Avenue in Manhattan.

11 Q Is that a restaurant?

12 A Yes, it is, fast-food.

13 Q When you arrived at McDonalds' did you and
14 Special Agent Philips Mitchell purchase some food?

15 A Yes, I purchased it.

16 Q What did you buy?

17 A Hamburger, french fries and a milk shake for
18 Mr. Rivers and then hamburger and cokes and french fries
19 for ourselves.

20 Q After purchasing this food, did you return
21 to the automobile?

22 A Yes.

23 Q Was Mr. Rivers still in the car?

24 A Yes.

25 Q With Agent Mitchell?

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A Yes.

Q What time was that, approximately?

A I'd say it was around 8:45, because McDonalds is right around the corner from our office.

Q After buying the food for yourselves and Mr. Rivers, and returning to the car, where did you go then, if anywhere?

A Proceeded to our office.

Q When you arrived at the FBI Headquarters on 69th Street, where did you go with Mr. Rivers?

A We took him to the seventh floor of our office.

Q What occurred there?

A That's where we go through the processing of prisoners.

Q Just briefly, for the record, please explain what is involved in the processing as you describe it?

A Advice of Rights, interview, fingerprinting, photographing.

Q Taking of a pedigree?

A Yes.

Q Approximately, what time was that, sir?

A Our arrival was at 8:47.

Q Now, I direct your attention to the period --

1
2 withdrawn.

3 , Following his processing, did there come a
4 time when you spoke with Mr. Rivers again?

5 A Yes.

6 Q What did you tell him then?

7 A Well, upon arrival on the seventh floor, I
8 again advised him of his rights from the Interrogation Advice
9 of Rights Form.

10 Q Was that the same form that you pointed out
11 as being the printed matter contained in Government's Exhibit
12 2 for identification?

13 A Yes, it is this whole thing.

14 Q You read this to him again?

15 A Yes.

16 Q Did you show him the form at that time?

17 A Yes.

18 Q Q Did there come a time when something was
19 written on the form?

20 A Yes.

21 Q In your presence?

22 A Yes.

23 Q I direct your attention to a specific spot
24 on this form which is marked Government's Exhibit 2 for
25 identification, and I ask you if you see a signature there?

1
2 A Yes, I do.

3 Q Whose signature is that?

4 A Virgil P. Rivers, Jr..

5 Q Was that signed in your presence?

6 A Yes.

7 Q Is there a notation beneath that and to the
8 left where there are other signatures that appear?

9 A Yes.

10 Q Do you recognize this signature that I am
11 pointing to?

12 A Yes.

13 Q Whose is that?

14 A William J. Augustitis.

15 Q Is there a name beneath yours?

16 A Yes; P. F. Mitchell, Jr..

17 Q Do you know Mr. Mitchell?

18 A Yes.

19 Q And he was present and executed this in your
20 presence?

21 A Yes.

22 Q Is there a time notation there?

23 A Yes, 8:55 p.m.

24 Q Was that entered on this form in your presence
25 as well?

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A Yes.

Q Next to your signature and next to Mitchell's signature, there appears certain writing, does there not?

A Yes.

Q What is that writing?

A That's the name that appears, S.A. FBI, NY, NY, 7/27/74.

Q What is the significance of what you have read?

A The SA stands for Special Agent; FBI stands for Federal Bureau of Investigation; and the NY, NY would stand for New York, New York.

Q And 7/27/74?

A That's the date this was furnished to him and we signed it.

Q Now, the reference I am pointing to here appears in a particular coloring.

Do you recognize who wrote that?

A Yes.

Q Who did?

A I did.

Q Directly beneath where you have written, SA, FBI, 7/27/74, etc., there is another notation that appears to be the same thing in a different coloring; is that right?

A Yes.

Q Who wrote that, do you know?

A Mr. Mitchell.

Q Was that done in your presence?

A Yes.

Q In the upper right-hand corner there appears certain other handwritten notations.

Would you please read the title and answer to each of these portions for us?

A Place: New York, New York; Date: 7/27/74;
Time: 8:50 p.m.

Q Now, the time in the upper right-hand corner is 8:50. The time as you have indicated in the lower left-hand corner is 8:55.

Would you tell us why there is the five-minute difference between those two times?

A 8:50 p.m. is the time I advised him of his rights. I read the form to him.

8:55 is the time that he signed the form.

MR. LEVIN-EPSTEIN: Very well, offered in evidence, your Honor.

MS. MOSKOWITZ: No objection.

MR. CORBETT: No objection.

THE COURT: Mark it.

1
2 THE CLERK: Government's Exhibit 2, previously
3 marked for identification, now marked in evidence.

4 (So marked.)

5 Q After Mr. Rivers signed the form, did you
6 orally ask him whether he understood his rights as well?

7 A Yes.

8 Q What did he say?

9 A He said he understood his rights.

10 Q Now, there is a portion on Government's
11 Exhibit -- I believe it is 2, now in evidence, that is printed
12 which precedes Mr. Rivers' signature.

13 Do you see where I am pointing?

14 A Yes.

15 Q Please read for us the title of that small
16 section of the form and what it says.

17 A It is a "Waiver of Rights."

18 "I have read this statement of my rights and
19 I understand what my rights are.

20 "I am willing to make a statement and answer
21 questions.

22 "I don't want a lawyer at this time. I under-
23 stand and know what I am doing.

24 "No promises or threats have been made to me
25 and no pressure or coercion of any kind has been used

1
2 against me."

3 Q And then he signed it?

4 A Yes.

5 Q What happened then, sir?

6 A We ate.

7 Q After finishing the food, that you were eating,
8 what happened after that?

9 A We started the interview.

10 Q Present at the interview were yourself and
11 Mr. Rivers?

12 A And Mr. Mitchell.

13 Q What time did the interview commence?

14 A At approximately 9:10 p.m.

15 Q Did Mr. Rivers continue to eat during the
16 course of the interview?

17 A Yes.

18 Q Can you tell us to the best of your recollection
19 what you asked Mr. Rivers and the response of what he said
20 to you at that point?

21 A I told him the interview concerned the robbery
22 of the First National City Bank, 8115 Flatlands Avenue,
23 Brooklyn, on July 15th.

24 He admitted his involvement in that bank
25 robbery.

MS. MOSKOWITZ: I object.

THE COURT: Sustained.

What did he say to you in response to that?

MR. LEVIN-EPSTEIN: I will withdraw the question.

Q Did there come a time when you completed this initial interview with Mr. Rivers?

A Yes.

Q What time was that, sir?

A Approximately 9:30 p.m.

Q What happened after you completed the oral interview with Mr. Rivers?

A Mr. Rivers agreed to furnish a signed statement.

Q Did there come a time when with his assistance you prepared such a statement?

A Yes.

MR. LEVIN-EPSTEIN: May this document be marked for identification, your Honor.

THE CLERK: Document marked for identification as Government's Exhibit 3.

(So marked.)

BY MR. LEVIN-EPSTEIN:

Q Agent Augustitis, I show you Government's Exhibit 3 for identification and ask you if you can identify

1
2 it for the Court and the record?

3 A Yes, I can.

4 Q Would you please do so?

5 A This is the signed statement.

6 Q That MR. Rivers prepared or you prepared?

7 A I prepared it.

8 Q How do you recognize it as being that state-
9 ment?

10 A It is my handwriting and my signature.

11 MR. LEVIN-EPSTEIN: Offered in evidence,
12 your Honor.

13 MS. MOSKOWITZ: No objection, your Honor.

14 THE CLERK: Government's Exhibit 3, previously
15 marked for identification, marked in evidence.

16 (So marked.)

17 BY MR. LEVIN-EPSTEIN:

18 Q Directing your attention to now what has been
19 marked as Government's Exhibit 3 in evidence, I ask you to
20 describe what the printed form of the front page of what is
21 a five-page document -- what is this form, a brief descrip-
22 tion?

23 A Interrogation and Advice of Rights Form.

24 Q Is this the same form you referred to as
25 contained in Government's Exhibit 2 in evidence?

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A Yes.

Q In the upper right-hand corner of Government's Exhibit 3 now in evidence, does there appear certain hand-written notations following the words, Place, Date and Time?

A Yes.

Q What are they?

A Place is New York, New York; the Date, 7/27/74; the Time, 10:05 p.m..

Q What is the significance of the time, 10:05 p.m.?

A This would be the time that I again advised Mr. Rivers of his rights.

Q Following your advice of Mr. Rivers of his rights at approximately 10:05 p.m. did there come a time when a certain signature was placed on the front of Government's Exhibit 3 in evidence in your presence?

A Yes.

Q I indicate a particular signature here. Do you recognize it?

A Yes, that's Virgil P. Rivers, Jr.'s signature, 7/27/74.

Q Was that signed in your presence?

A Yes.

Q Would it be fair to say that the following

1
2 two witnesses' signatures are the same as appearing in
3 Government's Exhibit 2?

4 A Yes.

5 Q That would be your own signature and Agent
6 Mitchell?

7 A Yes.

8 Q Following Agent Mitchell's signature there is
9 a time notation.

10 What is that?

11 A 10:10 p.m.

12 Q What is the significance of that time notation?

13 A This is the time that Virgil P. Rivers signed
14 the Advice of Rights form.

15 Q The signature to the upper right of those
16 signatures?

17 A Yes.

18 Q Following the time notation on the front page
19 there is a continuation of certain handwriting which con-
20 tinues for four pages; is that correct?

21 A Yes.

22 Q Describe for us what those four additional
23 pages and the portion on the front page of Exhibit 3 is.

24 A It is the signed statement that I prepared.

25 Q When you say you prepared it does that mean you

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wrote it out?

A Yes.

Q Was this written out based on any information received previously?

A Based on the information received from Mr. Rivers during the interview.

Q Approximately 20 minutes before?

A Yes.

Q Following your preparation of this written notation did Mr. Rivers have an opportunity to read it?

A Yes.

Q Did you read it to him?

A I had him read some of it out loud to make sure he could read it. But I didn't read it to him.

Q He read through it in your presence?

A Yes.

Q Did there come a time when he affixed his signature on a portion of it following his reading through it?

A Yes.

Q I point to the last page, in other words, the fifth page of Government's Exhibit 3 in evidence and I ask you if you see a signature there?

A Yes, Virgil P. Rivers, Jr..

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Q Is there a date following that?

A Yes.

Q This is witnessed by yourself and Agent Mitchell;
is that correct?

A Yes.

Q I show you the upper left-hand corner of page
5.

Do you see a handwritten notation there?

A Yes. It says, VPR.

Q Was that placed in your presence on that page?

A Yes, by Mr. Rivers.

Q And those are the initials of Virgil P. Rivers,
Jr.?

A Yes.

Q I indicate the upper left-hand corner of page
4; are there initials there as well?

A Yes.

Q And the lower right-hand corner?

A Yes.

Q Upper left-hand corner of page 3 and the lower
right-hand corner, initials appear there as well?

A Yes.

Q And in fact on the upper left-hand corner of
page 2, and the lower right-hand corner of page 2 and the

1
2 initials appear there as well?

3 A Yes.

4 Q Would you please read for the record what
5 the signed statement that was provided to you by Mr. Rivers
6 says?

7 A It says, "I, Virgil P. Rivers, Jr., furnish
8 the following free and voluntary statement to William J.
9 Augustitis and P. F. Mitchell, Jr., who have identified
10 themselves to me as Special Agents of the FBI.

11 "I have been advised that I am being questioned
12 concerning the July 15, 1974 robbery of the First National
13 City Bank, 8115 Flatlands Avenue, Brooklyn, New York.

14 "No threats or promises have been made to me
15 to furnish this statement.

16 "I was born November 29, 1947, in New York,
17 New York and have graduated from high school.

18 "I can read and write the English language.

19 "On July 15, 1974, I drove a yellow taxicab
20 belonging to the H.E.W. Cab Corporation, to the First National
21 City Bank, 8115 Flatlands Avenue, Brooklyn, New York.

22 "I parked the cab near the bank and entered
23 the bank with another person in order to rob it.

24 "I carried a sawed-off .22 calibre rifle and as
25 I entered the bank I told the customers that it was a

Augustitis - direct

1
2 stickup and they were to face the teller's counter.

3 "I told the tllers to face the back wall of the
4 bank and for all to keep their hands where I could see them.

5 "After approximately four minutes, in the bank
6 I called time and left the bank.

7 "After I left the bank I drove the car to the
8 Ft. Greene Projects, Brooklyn, New York, where I discarded
9 the clothes I was wearing and the money of the robbery was
10 split up.

11 "My part of the loot was approximately \$1500.

12 "I think took the cab back to garage at 341
13 Bergen Street, Brooklyn, New York, turned in my money for
14 for driving the taxi the previous night and left.

15 "I have since spent my share of the loot for
16 my heroin habit. The .22 calibre sawed-off rifle I cut
17 up and put it in a plastic bag and through it in the East
18 River from the Manhattan Bridge.

19 "I have read the above statement consisting
20 of this page and two other pages and it is true and correct
21 and have initialled each page and signed my name below."

22 Q Following that last word "below," is there a
23 signature where I am pointing (indicating)?

24 A Yes. Virgil P. Rivers, Jr..

25 Q And a date?

1

2

A 7/27/74.

3

4

Q Is that signature witnessed by two other agents of the FBI?

5

A Witnessed by myself and Special Agent Mitchell.

6

7

8

Q As is normally the practice of the FBI did there come a time following his execution of his signature at that point where you continued the signed statement?

9

A Yes.

10

Q Please read the continuation.

11

12

A "I, Virgil P. Rivers, Jr., was advised of my rights as they appear on the signed Advice of Rights Form.

13

14

15

16

"I make the following free and voluntary statement to William J. Augustitis and P. F. Mitchell, Jr., who have identified themselves to me as Special Agents of the FBI.

17

18

19

20

"I have been advised that I am being questioned concerning the July 15, 1974 robbery of the First National City Bank, 8115 Flatlands Avenue, Brooklyn, New York.

21

22

23

24

"No threats or promises were made to me to furnish this statement. I was born on November 29, 1947 in New York, New York, and have graduated from high school.

25

"I can read and write the English language.

1
2 "On July 15, 1974, Terrence Copeland and I
3 robbed the First National City Bank, 8115 Flatlands
4 Avenue, Brooklyn, New York.

5 "On the morning of the robbery we drove to the
6 bank in a yellow taxicab belonging to the H.E.W.
7 Cab Corporation for whom I worked.

8 "I parked the taxi near the bank and we entered
9 the bank.

10 "I carried a sawed-off .22 calibre rifle and
11 Terrance Copeland was unarmed.

12 "As we entered the bank I told the customers
13 that it was a stickup and they were to face the tellers'
14 counter.

15 "I told the tellers to face the back wall of
16 the bank and for all to keep their hands where I could
17 see them.

18 "I covered the customers and bank employees
19 while Terrance Copeland vaulted the counter and cleaned
20 out the tellers' drawers.

21 "After approximately four minutes in the bank,
22 I called time and Terrance Copeland vaulted back over
23 the counter and we left the bank.

24 "We drove from the bank in the taxi to the
25 Ft. Greene Projects, Brooklyn, New York, where we

discarded our clothes and split up the approximate \$3000 loot.

"My share was approximately \$1500.

"I then took the taxi back to the garage at 341 Bergen Street, Brooklyn, New York, turned in the money for my driving the taxi the previous night and left.

"I have since spent my share of the loot for my heroin habit.

"The .22 calibre sawed-off rifle, I cut it up and threw it in the East River from the Manhattan Bridge.

"I have read the above statement consisting of this page and two other pages and it is true and correct.

"I have initialled each page and each correction and signed my name below."

Q Following the portion that you have just read, does there appear a signature?

A Yes, Virgil P. Rivers, Jr..

Q Was that placed there during your presence?

A Yes.

Q Is there a date following the signature?

A Yes.

discarded our clothes and split up the approximate \$3000 loot.

"My share was approximately \$1500.

"I then took the taxi back to the garage at 341 Bergen Street, Brooklyn, New York, turned in the money for my driving the taxi the previous night and left.

"I have since spent my share of the loot for my heroin habit.

"The .22 calibre sawed-off rifle, I cut it up and threw it in the East River from the Manhattan Bridge.

"I have read the above statement consisting of this page and two other pages and it is true and correct.

"I have initialled each page and each correction and signed my name below."

Q Following the portion that you have just read, does there appear a signature?

A Yes, Virgil P. Rivers, Jr..

Q Was that placed there during your presence?

A Yes.

Q Is there a date following the signature?

A Yes.

Augustitis - direct

1
2 Q After the signature of Mr. Rivers again it is
3 witnessed by your signature and the signature of Agent
4 Mitchell; is that correct?

5 A Yes.

6 Q I now direct your attention to July 29 of
7 1974 and I ask you were you working on that day?

8 A Yes.

9 Q Did there come a time on that day when you met
10 with the defendant Edward Terrence Copeland?

11 A Yes, I did.

12 Q As a result of meeting with him, did you
13 prepare any notes for yourself?

14 A Yes.

15 MR. LEVIN-EPSTEIN: May this document be marked
16 for identification, your Honor.

17 THE CLERK: Document marked for identification
18 as Government's Exhibit 4.

19 (So marked.)

20 BY MR. LEVIN-EPSTEIN:

21 Q I show you what has been marked as Government's
22 Exhibit 4 for identification and ask you if you can identify
23 it?

24 A Yes, I can.

25 This is the Arrest and Interview Log of

1 MR. LEVIN-EPSTEIN: If you would like, your
2 Honor.

3 (A recess was then taken.)

4 (At 4:10 P.M. the hearing continued.)

5 VIRGIL RIVERS, JR., having been duly Sworn
6 by the Clerk of the Court, took the witness stand on
7 his own behalf and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MOSKOWITZ:

10 Q Mr. Rivers, how old are you?

11 A Twenty-six.

12 Q And how old were you in July of 1974?

13 A Twenty-five.

14 Q At that time, did you have a drug problem?

15 A Yes, I did.

16 MR. LEVIN-EPSTEIN: Your Honor, may the witness
17 speak up a little bit, I can't hear him.

18 A Yes, I did.

19 Q How much a day did it cost you to support your
20 drug habit?

21 A Roughly a \$100.

22 Q How frequently -- Was this a heroin habit, sir?

23 A Yes, it was, ma'am.

24 Q Did you inject heroin into your veins?

25 A Yes, sir.

1
2 Q How frequently did you have to inject that to
3 maintain your habit?

4 A Three times a day.

5 Q What time and what date was it that you were
6 arrested in this case?

7 A I was arrested the 27th of July.

8 Q And about what time was it that you were taken
9 into custody?

10 A This was about a quarter to 7:00, 7:00 o'clock.

11 Q That was a quarter to 7:00, 7:00 o'clock in the
12 evening, P.M.? Is that correct?

13 A Yes, ma'am.

14 Q Prior to that time, when was the last time that
15 you had used heroin?

16 A About 11:30 the night before.

17 Q What was your physical and mental condition at
18 the time that you were apprehended, arrested in this case?

19 A I was leaving my apartment to obtain drugs be-
20 cause I was getting ill at the time.

21 Q Now will you describe to the Court in your own
22 words what happened when you met Agent Augustitis?

23 A I was apprehended then by the Major Crime Divi-
24 sion, I was in custody at the 112th Precinct, Rego Park, Queens,
25 and the FBI came in, they identified themselves, and told me

1
2 they are taking me to the Federal Building shortly.

3 I informed them that I was sick at the time from
4 the habit. "So, well, just hold on." They then transported
5 me to the FBI building.

6 Down on the way there, when we reached Manhattan,
7 they asked me did I want something to eat, and at this time I
8 really can't say if I said yes or no. They stopped. We bought
9 some food, came out, got in the car.

10 Q Did you eat anything at that time?

11 A No, I did not, I was too sick to eat anything.

12 Q And then what happened?

13 A We went down to the FBI building, they took me
14 in a room, took handcuffs off of me, and --

15 Q Who was in the room with you?

16 A Just two FBI men.

17 They asked me about the bank robbery from the
18 Precinct to the FBI building.

19 Q Did you answer any of the questions?

20 A No, I didn't, not in the car, I didn't make no
21 statement. I believe I said something about, "I don't have an
22 attorney, so I would like an attorney," at which time there
23 was nothing else was said to me.

24 When we got into the FBI building, they put me
25 into the room and took the cuffs off me. They started to ques-

1
2 tion me about the bank robbery again. Then I can't remember
3 exactly why, but one said to me, "Well, let's wait a minute,
4 let's eat" --

5 MR. LEVIN-EPSTEIN: I am sorry?

6 THE COURT: I didn't get that, let's what?

7 THE WITNESS: "Let's eat."

8 THE COURT: Eat?

9 THE WITNESS: Right.

10 BY MS. MOSKOWITZ:

11 Q One of them said that?

12 A Yes.

13 Q To the other one?

14 A Well, I guess he was making a general statement,
15 because the three of us were in the room.

16 So someone took the food out of the bag, puts
17 it, the hamburger, and I believe it was a coke in front of me,
18 at which time I told them I can't eat, my stomach wouldn't be
19 able to hold the food, at the time I was very ill, withdrawing.

20 They ate.

21 They questioned me about the bank robbery, ques-
22 tioned me for a couple of hours, at which time I did make it
23 known that I was in withdrawal from drugs, and was getting very
24 ill, and you can see physical conditions, you know, of being
25 withdrawn at the time.

1 Q What was happening to your body?

2 A I had hot and cold spells, I was perspiring,
3 I was having the cramps in my back and my stomach was drawn
4 on me.
5

6 That's about it.

7 Q And continue, what happened then?

8 A Well, they were questioning me about the bank
9 robbery, they were asking me what I did with my share of the
10 money, where was I on that day.

11 Q Did there come a time when they presented you
12 with a statement that was written?

13 A Well, it was more or less, a statement was more
14 or less being written up as they were questioning me, you know,
15 it was like asking me questions as to the statement, Your name
16 Virgil Rivers? Yes. And they would write at the same time,
17 he was writing the statement out, and like I was getting very
18 sick at the time. He started telling me, you know, what had
19 occurred, you know, about the bank robbery, how it occurred,
20 things, at the same time he was writing this down, and I made
21 it known I was sick, you know.

22 Q Did they say anything to you, or did they -- Did
23 Agent Augustitis say anything to you about feeling sick? Did
24 you ask him for something to make you better?

25 A I did comment, would I receive medication where

1
2 I was going to be held for the evening, or the duration of the
3 time I was in custody, I was informed that I would receive
4 medication right now, nothing happened, so it got pretty late,
5 and the statement was like written up, filled out, you know,
6 it was like there in front of me, and it was pussing papers in
7 front of me, you know, I was getting real sick, you know, and
8 they kept telling me, Just sign there, you know, so like I asked,
9 you know, like it was, what is going to happen to me, you know,
10 I'm getting real sick, will anything be done to take care of
11 my habit.

12 Just, You just sign the statement, you know, and
13 we'll take care of you.

14 Q Did you sign?

15 A At that time, yes, because I was, you know, in
16 a very bad way with my withdrawal.

17 I'd confess to killing the President at that
18 time.

19 Q Do you recall anybody telling you that you didn't
20 have to sign anything?

21 A It was like the book said, at the time, you know,
22 I can't specifically, you know, you know, specific things were
23 being said to me, you know, or take specific parts of the con-
24 versation, you know, there was a lot of things being shot at
25 me at the time, like my mind wasn't on it, my mind was on get-

1
2 BY MR. LEVIN-EPSTEIN:

3 Q Mr. Rivers, I show you what has been marked as
4 Government's Exhibit 3 in evidence, and I ask you to look where
5 I am pointing.

6 Do you see where I am pointing (Indicating)?

7 A Yes, I do.

8 Q Is that your name?

9 A Yes.

10 Q Did you sign that?

11 A Yes, I did.

12 Q I now ask you to direct your attention to this
13 portion of Government's Exhibit 3 in evidence, and ask you is
14 that your name (Indicating)?

15 A Yes, it is.

16 Q Did you sign that?

17 A Yes, I did.

18 Q Now I direct your attention to the third point
19 in Government's Exhibit 3, and ask, Is that your name?

20 A Yes, it is.

21 Q Did you sign that?

22 A Yes, I did.

23 Q How long have you been in the habit, Mr. Rivers?

24 You have to speak up, sir.

25 A Roughly six, seven years.

HS:GA
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A 40
Rivers - cross/Levin-Epstein 108

1 Q During the course of this period of six or seven
2 years, when you had been addicted to, I assume, heroin, have
3 you ever gone through withdrawals?
4

5 A Yes, I have.

6 Q Isn't one of the symptoms that you went through
7 withdrawal was a general feeling of discomfort?

8 A Yes.

9 Q Isn't one of the feelings that you experienced
10 when going through withdrawal that of hot and cold spells?

11 A Yes.

12 Q And one of the feelings that you would experience
13 would be a certain amount of shaking and nervousness?

14 A Well, not all the time, no.

15 Q But you have experienced that feeling of shaking
16 and nervousness when going through withdrawals?

17 A Yes.

18 Q Were you experiencing that feeling of shakiness
19 or nervousness on the particular night when you signed those
20 three times your name (Indicating)?

21 A Yes, I did.

22 Q You did.

23 Mr. Rivers, I ask you to look at the signature
24 on the first page of Government's Exhibit 3 in evidence, and
25 look at your own signature. Does that signature appear to you

1
2 as one that was written with a shaking hand (Indicating)?

3 A At the time when I signed it, it was not shaking.

4 Q How about this signature, Mr. Rivers (Indicating)?

5 A No.

6 Q You weren't shaking then, either, were you?

7 A No.

8 Q How about that one here on Exhibit 3, you were
9 not shaking then, either? (Indicating)?

10 A No.

11 Q I show you what has been marked as Government's
12 Exhibit 2 in evidence, and I ask you to refer your attention
13 to the signature on this paper. Did you sign that?

14 A Yes, I did.

15 Q Were you shaking when you signed that?

16 A No.

17 Q Were you in withdrawal when you signed that?

18 A Yes, I was.

19 Q And there is no doubt, is there, when the FBI
20 first came and met with you at the 112th Precinct, they identi-
21 fied themselves?

22 A Yes.

23 Q No doubt?

24 A No doubt.

25 Q And they told you that you were under arrest for

1 bank robbery? There is no doubt about that, is there?

2 A No.

3 Q And they told you your rights at that time?

4 A No, they did not tell me my rights at that time.

5 Q What did they say to you?

6 A They told me I was arrested for bank robbery.

7 Q They didn't tell you that you had the right to
8 remain silent?

9 A No.

10 Q They didn't tell you that you had the right to
11 an attorney?

12 A No.

13 Q They didn't tell you that you had the right to
14 refrain from any interview until you had the opportunity to
15 talk with a lawyer?

16 A No, I was just told that I was arrested for bank
17 robbery.

18 Q Have you ever seen Government's Exhibit 2 in evi-
19 dence before, Mr. Rivers?

20 A At the FBI building, yes.

21 Q You saw that at the FBI building?

22 A Yes.

23 Q You do read English, Mr. Rivers?

24 A Yes, I do.

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Q And you can read that printed paragraph that appears exactly above where you signed your own name?

A Yes.

Q And you did read that yourself before you signed it, didn't you?

A Yes.

Q You did?

A Yes.

Q You said that after you had been transported to the FBI building, a certain statement was placed in front of you, and you signed it, right?

A Yes, after being questioned, and several questions were being shot at me and I was beginning to feel sick, yes.

Before I left --

Q I am sorry?

A Before I left the FBI building I was shaking pretty bad.

Q Did you tell Agent Augustitis that you wanted to see a doctor?

A A doctor, no.

Q Did you tell Agent Augustitis you were shaking pretty badly, and it was from withdrawals of heroin?

A The symptoms were visible.

Q Did you tell Agent Augustitis that you were shaking pretty badly from withdrawal from heroin, and you wanted to see a doctor, yes or no?

A I didn't tell him I was shaking, but I told him I was sick.

Q You told him you were sick from withdrawals?

A Yes.

Q Did you tell Agent Mitchell that?

A Yes.

Q What did they say?

A They told me where I would be housed, I would receive medication.

Q Did you tell them that you needed a doctor right then and there?

A No.

Q Did you tell them that you needed narcotics right then and there to help you through withdrawals?

A Yes.

Q Did they say to you, "You can't have narcotics until you sign this confession"?

A Not in those words.

Q What did they say?

A They told me after the statement was signed, I would be taken care of.

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Q Were you taken care of after the statement was signed?

A No.

Q But during the time that you were being interviewed, Mr. Rivers, and during the time that you affixed your signature in three different places to this Government's Exhibit 3, you understood exactly what was going on, didn't you?

A Yes, I understood what was going on.

Q And there is no doubt that during the time --
Withdrawn.

There is no doubt that you looked at this statement before you signed it, didn't you?

A I looked at it, yes.

Q And there is no doubt that you read the statement, right?

A No, I didn't read the statement. I signed it. I didn't read it. I didn't go into the statement.

Q I direct your attention to the upper lefthand corner of page 2 of Government's Exhibit 3 in evidence. Do you see initials there?

A Yes.

Q Whose are those?

A Mine.

Q Did you place them there?

1 that were shown to Mr. Nierenberg were highly
2 prejudicial in themselves.

3 All the five other people that were shown to
4 him were clearly darkened. They were older than Mr.
5 Rivers, they all had round heavy-set faces. His
6 was the only narrow face and the shape of the face
7 clearly is important, because Mr. Nierenberg himself
8 said that he felt that the bank robber had a thinner
9 face.

10 Furthermore, I think three of those people
11 had very heavy mustaches and at the most, the
12 photographs of Virgil Rivers showed a faint trace of
13 a shadow on his upper lip. The five people were so
14 different from Mr. Rivers, that it was highly
15 prejudicial, and I think it would be a violation of
16 due process for this man to come to court and make
17 an in-court identification. I think it should be
18 suppressed for another reason. This identification was
19 made prior to the arrest of Mr. Rivers and this
20 identification was made in July.

21 Shortly thereafter, Mr. Rivers was arrested,
22 and at that time, I think it was incumbent for the
23 United States Attorney to put Mr. Rivers in a lineup,
24 or at least, to have advised counsel -- which at that
25 time was not myself, but another lawyer. I believe he

1 should have advised counsel that there was an
2 identification and there was no lineup, and at least
3 give counsel the option of requesting a lineup, because
4 we have a situation of Mr. Nierenberg saying from
5 this photograph, that he felt this photograph closely
6 resembled Mr. Rivers.

7 Now, almost a year later, Mr. Nierenberg is
8 going to come to court, he is going to take the stand,
9 and we are going to have what is the worst possible
10 kind of showup. He is going to see this defendant
11 seated right here, having never seen him in the
12 flesh, never seen him in a lineup, and he is going to
13 be asked to see if he recognizes that man. To put
14 him in a lineup now would be ridiculous, because it
15 is a year later. The proper thing to have done was
16 to have put him in a lineup in July of last year, and
17 I believe it was a grave error and a calculated error
18 on the part of the United States Attorney's office,
19 and I believe your Honor should not let this kind of
20 prejudice go by.

21 We should not let this man now take the stand,
22 point out this man, and not give him any right to
23 appear in a lineup to have a proper kind of
24 identification.

25 I do not think your Honor should let this go

1 unnoticed, and I do not think your Honor should let
2 the office of the United States Attorney get away with
3 this. I believe that it would be proper to suppress
4 this identification and not allow this man to come to
5 court and make what is essentially the worst kind of
6 a showup.

7 MR. LEVIN-EPSTEIN: Your Honor, with respect
8 to the allegations of a calculated attempt to
9 deprive Mr. Rivers of his rights, I will respond with
10 what the Supreme Court has required to be afforded a
11 defendant.

12 In United States against Wade, the seminal
13 case in the area of lineup identification, the
14 Supreme Court said -- as this Court well knows --
15 that a lineup is required only after a man is in
16 custody and an identification attempt is going to be
17 made. If it is not necessary in the opinion of the
18 prosecutor, in the discretion of the prosecutor, to
19 make such an identification attempt, there is no
20 requirement that a lineup be had.

21 In any event, the case directly on point with
22 respect to the facts in this case -- as the Court
23 well knows -- is United States against Simmons, which
24 requires that if a photographic spread be shown to
25 a potential identifying witness, that they be shown

1 in such a manner as not to suggest to the witness
2 who, if anyone, in the spread, shall be the one who
3 the investigating agent wishes the witness to pick out.

4 Further, that the showing be done in such a way
5 -- and I think I am quoting directly here -- not to
6 be inherently suspect or subject to suggestion.

7 I believe the record stands clear on that as
8 to whether the manner in which the photographs were
9 shown were suggestive or not. I now hand up to the
10 Court the photographs, exhibits 7A through 7F, which
11 require no further arguments from me. They speak
12 for themselves.

13 Whether a man is heavy-faced, light-faced,
14 dark-skinned, light-skinned, these matters we give
15 to the Court to determine whether this photographic
16 spread was appropriate and under the rules, in the
17 spirit of Simmons.

18 THE COURT: The Court, after listening to the
19 testimony and likewise reviewing the photographs that
20 were submitted for the purpose of making an
21 identification, finds that the photographs do not
22 violate any of the rules, nor are they so implicitly
23 suggestive so that the Court would, of necessity have
24 to deny their admission as an in-court identification.

25 The Court finds that being so, they are not

1 suggestive, impermissibly or otherwise, and denies the
2 application.

3 MRS. MOSKOWITZ: May I be heard on one further
4 point?

5 I understand that your Honor is going to allow
6 Mr. Nierenberg to state that he looked at these
7 pictures and said that the photographs of Virgil Rivers
8 looked like the man.

9 I would ask your Honor not to allow Mr. Levin-
10 Epstein to ask Mr. Nierenberg whether this is the man,
11 because he has never seen Mr. Rivers in the flesh.

12 THE COURT: He can ask him in the courtroom,
13 "Do you see the man in this courtroom?" Without
14 looking at these pictures. If he wants to do that,
15 that is all right. I do not have a right to restrict
16 him under those circumstances.

17 MRS. MOSKOWITZ: Then may we have a showup? He
18 has never seen this man in the flesh.

19 THE COURT: The fact that he never has seen him
20 is not a limitation. You say he has never seen him?
21 He identified a picture because he did see a person
22 that resembled a picture. That is what the agent
23 said with reference to Mr. Nierenberg's identification
24 and the reason why they selected the picture of Mr.
25 Rivers, because he had seen him in the flesh and he

1 could identify him from a photograph.

2 I will not accept the argument.

3 MR. LEVIN-EPSTEIN: The Government is ready
4 to select a jury.

5 THE COURT: Ready to select a jury?

6 Bring them up.

7 Are there any special questions, before I
8 bring the jury up, that you would like the Court to
9 ask?

10 MR. CORBETT: Before we get to that, Judge,
11 I have a motion under United States against Luck on
12 behalf of Mr. Copeland.

13 Mr. Copeland has a certain criminal record,
14 and when he takes the stand, of course, I feel it
15 would be highly prejudicial if any of those matters
16 were brought out.

17 THE COURT: First of all, in point of time,
18 does it go back more than five years?

19 Secondly, in point of similarity, what does it
20 show?

21 MR. LEVIN-EPSTEIN: Actually, I believe the
22 new rules provide for 10 years, that is as to a
23 witness. As to a defendant, it is a matter of
24 discretion as to whether it is probative or prejudicial.

25 THE COURT: No question about that.

1 MR. CORBETT: Do you have a copy of this so
2 we may give one to the Judge? It is hard to do this
3 orally.

4 THE COURT: Can't you agree?

5 MR. CORBETT: I have not been able to agree with
6 Mr. Levin-Epstein on anything.

7 MR. LEVIN-EPSTEIN: We agree on almost everything.

8 MR. CORBETT: Except when we step into a
9 courtroom.

10 MR. LEVIN-EPSTEIN: I seem to have only one
11 copy of the rap sheet.

12 THE COURT: I will listen to you. Go ahead.

13 MR. CORBETT: The first one was an arrest on
14 June 5, 1970.

15 THE COURT: For what was that?

16 MR. CORBETT: For grand larceny, section 155.30
17 of the New York State penal law, Grand Larceny in the
18 Third Degree.

19 THE COURT: What was the disposition?

20 MR. LEVIN-EPSTEIN: I do not have a disposition
21 for that.

22 MR. CORBETT: Apparently a bench warrant was
23 issued and nothing else happened.

24 Mr. Copeland, you were not convicted on that?

25 DEFENDANT COPELAND: No.

1 MR. CORBETT: So we have no problem there.
2 He is the one that would know, Judge.

3 On July 29th, 1970, he was arrested for a
4 class A misdemeanor of jostling. He pleaded to a
5 class B misdemeanor. I have a notation of 50 days;
6 is that correct?

7 DEFENDANT COPELAND: Right.

8 MR. CORBETT: I do not think that is a
9 serious offense. For the grace of God, I might
10 jostle Mr. Levin-Epstein, here.

11 MR. LEVIN-EPSTEIN: That is the euphemism
12 to describe pocket-picking.

13 MR. CORBETT: On October 12, 1970, he has a
14 class A misdemeanor, possession of a hypodermic.

15 THE COURT: If he comes in and complains about
16 being an addict, there is nothing wrong that he was
17 found with a hypodermic needle. He cannot be an
18 addict with the utensils.

19 MR. CORBETT: If he doesn't bring up the
20 subject --

21 THE COURT: I think I will reserve on that.

22 MR. LEVIN-EPSTEIN: I was going to suggest that.
23 Thank you.

24 MR. CORBETT: On October 12th, 1971, the
25 anniversary date of the hypodermic, we have a class

1 A misdemeanor for possession of stolen property and
2 jostling. On that one it was disposed of by a class
3 A misdemeanor, pleading to possession of stolen
4 property, where the Court gave him 90 days.

5 I am now up to October 12, 1971, the anniversary
6 of the other jostling.

7 THE COURT: Let me hear the rest.

8 MR. CORBETT: Now on December 1, 1971, he was
9 arrested for a class B felony, robbery 1, and possession
10 of a weapon.

11 Now, that was disposed of and he did time in
12 Sing-Sing.

13 THE COURT: He would be able to ask that one.

14 DEFENDANT COPELAND: It was a class E.

15 THE COURT: That's a five-year maximum.

16 MR. CORBETT: Yes.

17 THE COURT: He'd be able to ask that one.

18 MR. CORBETT: Judge, may I most respectfully
19 call the Court's attention to United States against
20 Sanderval?

21 THE COURT: That does not apply to us.

22 MR. CORBETT: Still there is a statement there
23 by the Court of Appeals of the State of New York,
24 which is a very learned Court --

25 THE COURT: No question about that. All of

1 my friends are there.

2 MR. CORBETT: They point out the grave injustice
3 of introducing similar offenses and they specifically
4 point out --

5 THE COURT: This is not a similar offense.
6 Larceny of a bank and robbery of a bank is different
7 from the robbery of an individual.

8 MR. LEVIN-EPSTEIN: The Government does not
9 propose to offer the prior acts that underlie the
10 1971 conviction as a prior similar act.

11 THE COURT: I understand that.

12 (continued next page.)
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MR. CORBETT: I am thinking of cross examination.

MR. LEVIN-EPSTEIN: Under the doctrine of liberal cross examination of a defendant taking the stand with a prior conviction in a similar type offense, I believe the Government should be allowed to inquire.

THE COURT: Yes, has the right to ask him.

MR. CORBETT: On April 13, 1974 -- that hasn't been disposed of, a class A misdemeanor, possession of a hypodermic.

MR. LEVIN-EPSTEIN: My records indicate, as to the April 13th, 1974 date, for the possession of the hypodermic instrument, where Mr. Corbett has indicated that the matter has not yet been disposed of, as a result of that arrest, Mr. Copeland's parole from the previous conviction was revoked and a bench warrant ordered.

MR. CORBETT: But he was never convicted on that. He may have been discharged with the thanks of the Court on April 13th.

THE COURT: Did he ever receive any one of those unconditionals?

MR. CORBETT: That was never disposed of.

DEFENDANT COPELAND: No.

1
2 THE COURT: It might have been disposed
3 of by a revocation of parole. That would be a
4 conviction.

5 MR. CORBETT: On April 13th, 1974 he was
6 arrested for a class A misdemeanor, under the law
7 of the State of New York, possession of a hypodermic.
8 As a result of that arrest his parole from the previous
9 thing was revoked. This is not a conviction on this.

10 THE COURT: No.

11 MR. LEVIN-EPSTEIN: I will not inquire into
12 that matter.

13 MR. CORBETT: We only have one other charge
14 pending, which there hasn't been a conviction on, and
15 that is a robbery 1 charge, a class B felony.

16 THE COURT: No conviction?

17 MR. LEVIN-EPSTEIN: I will inform the Court that
18 an indictment has been filed in the Supreme Court of
19 Kings County as of January 13th of 1975, charging
20 Mr. Rivers and Mr. Copeland, as co-defendants, in a
21 armed robbery indictment, two counts of unarmed
22 robbery, two counts of Grand Larceny, and one count
23 of possession of a firearm.

24 I can inform the Court that during the course
25 of the robbery a homicide occurred. If either of the
defendants take the stand, the Government should have

1 the right to inquire as to the facts of that case.

2 THE COURT: I will reserve decision at this
3 point as on the prior similar acts.

4 MR. CORBETT: I am his counsel on that. I have
5 not even tried the case.

6 THE COURT: This is a little different. One
7 was being charged, and the other was not being charged.
8 The prejudice might be so heavy that it would affect
9 the right of the other defendants. That is not the
10 case here. I would say it is admissible. I would
11 reserve on it, however, but my opinion is that it is
12 admissible.

13 MR. LEVIN-EPSTEIN: Even though the Government
14 takes the position it is a subsequent similar act,
15 it would be admissible. My own feeling is that if a
16 defendant is on the stand, any act --

17 THE COURT: Any act as to his character --

18 MR. LEVIN-EPSTEIN: Exactly.

19 MR. CORBETT: Your Honor has reserved on some
20 of these, then?

21 THE COURT: I have reserved on the hypodermic
22 needle and likewise on the robbery one.

23 MR. LEVIN-EPSTEIN: The pending robbery.

24 MR. CORBETT: But the June 6, 1970 Grand
25 Larceny in the Third Degree, that is out, I assume?

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THE COURT: Yes.

MR. LEVIN-EPSTEIN: Very well.

MR. CORBETT: On July 28, 1970, the class A misdemeanor for jostling, that is out too?

THE COURT: Those two are out.

MR. CORBETT: I just want to make sure.

You reserved on the next class A misdemeanor, possession of a hypodermic?

THE COURT: Only in the event he takes the witness stand, I will make a determination as to that.

MR. CORBETT: The next one, the class A misdemeanor, possession of stolen property and jostling, I would assume that is out, too?

MR. LEVIN-EPSTEIN: Your Honor indicated that that was appropriate.

THE COURT: That is appropriate. It goes to the heart of the situation.

MR. CORBETT: Then your Honor is allowing in the one from December 1, 1971 for which he did three years?

THE COURT: Yes.

MR. CORBETT: As to the April 13th, 1974 possession of a hypodermic, I have that that is out?

MR. LEVIN-EPSTEIN: I indicated that I would

1 not go into that, but as to the pending matter,
2 the Court has reserved decision.

3 THE COURT: Yes.

4 MR. LEVIN-EPSTEIN: As to any questions that
5 the Government might have on voir dire, the
6 Government would trust the discretion of the Court,
7 having selected juries previously.

8 THE COURT: If you think I missed anything, just
9 let me know on the side. Do not stand up and say,
10 "Would you ask?"

11 MRS. MOSKOWITZ: I did not make a Luck motion,
12 because it was my understanding that Mr. Rivers had
13 no prior criminal record. I would like to inquire
14 whether Mr. Levin-Epstein has any other knowledge.

15 Secondly, I would like to inquire -- I under-
16 stand from listening to argument of Mr. Corbett,
17 that Mr. Epstein intends to introduce evidence of
18 not a prior criminal conviction, but an alleged
19 prior criminal act?

20 I must make a Luck motion in that regard.

21 MR. LEVIN-EPSTEIN: The Government is aware
22 of three prior arrests that are attributed to
23 Mr. Rivers. None of those -- we have any knowledge
24 of a conviction. The Government would not be proving
25 any of that on its case in chief.

1
2 As to the pending matter in the Supreme
3 Court, the Government would reserve the right to
4 inquire into such matters should the defendant
5 elect to take the stand.

6 MRS. MOSKOWITZ: Do I understand you correctly
7 that you are not going to inquire about the three
8 arrests that did not result in a conviction?

9 MR. LEVIN-EPSTEIN: Not on the Government's
10 case in chief.

11 THE COURT: Not on his direct case.

12 MRS. MOSKOWITZ: And if he takes the stand,
13 you will inquire as to those?

14 MR. LEVIN-EPSTEIN: I think that is a matter
15 we will have to make a determination on at the time.
16 I will approach the side bar and ask the Court before
17 I ask any questions.

18 MRS. MOSKOWITZ: With respect to the pending
19 case with Copeland and Rivers, I am joining in Mr.
20 Corbett's motion to exclude that matter. It puts this
21 defendant in the most difficult of situations. He
22 is forced then, to testify on a pending case and he
23 is forced to put himself into a position where if he
24 says something on the record, that may be used against
25 him in that case.

THE COURT: That is what happens when a

1 defendant takes the stand as a witness in his own
2 behalf, he becomes subject to the cross examination of
3 counsel as with any other witness. He is subject to
4 the irregularities in his life that may affect his
5 case. That is for the defendant and his attorney
6 to weigh. We can protect him, but we can't protect
7 him from everything.

8 MRS. MOSKOWITZ: The fact that he and
9 Copeland are together in a case in the State Court and
10 are now together in this case here, presents a
11 highly prejudicial situation.

12 THE COURT: My comment to that is , anything
13 that is said in a courtroom, no matter where it is as
14 to one defendant or another, is always prejudicial.
15 It is prejudicial to the extent that it may lead to
16 a conviction. I don't buy that at all. Of course
17 it is prejudicial, but the question of prejudice is
18 outweighed by its probative value. It doesn't have
19 to be a single rule. When they mention his name in
20 conjunction with doing something wrong, it is
21 prejudicial, but it may be admissible.

22 MR. LEVIN-EPSTEIN: I think it is clear in this
23 case, in light of count 3 of the indictment which
24 charges a conspiracy, the contact and communication
25 between the two defendants here or elsewhere would be

1 relevant to show knowledge of each other's
2 existence and a criminal agreement. I believe that
3 is relevant and of course, the Government recognizes
4 the Fifth Amendment privilege that any defendant has
5 to refuse to testify on the basis that it may incriminate
6 him here or elsewhere.

7 THE COURT: Yes.

8 MR. LEVIN-EPSTEIN: I would ask the Court to
9 inquire of counsel, if a defendant is going to be
10 placed on the witness stand, whether he is going to
11 plead the Fifth Amendment as to questions propounded
12 to him, that he then not be permitted to testify.

13 MRS. MOSKOWITZ: I will not make a comment
14 upon that at this time, because in view of your
15 Honor's decision, I am forced to look into the question
16 much more deeply, as to whether I will call Mr. Rivers
17 as a witness.

18 I had fully intended to do so. Now I believe
19 if the United States Attorney is permitted to cross
20 examine on that point, that he has a pending case with
21 Copeland, that it would be so prejudicial as to
22 prevent the jury from listening to this case with
23 an open mind.

24 THE COURT: The circuit rule is quite clear.
25 It doesn't make any difference where the examination
involves a pending case or a pending indictment.

1 Merely because a person was indicted, the
2 indictment is not the probative aspect of admission.

3 MRS. MOSKOWITZ: I understand that. I think
4 each case has to be looked at individually.

5 THE COURT: I am looking at his case
6 individually. I am looking at this case as I see it.

7 MR. LEVIN-EPSTEIN: It occurred to me that my
8 remarks might have been misconstrued. I did not
9 mean that if the defendant was going to take the
10 Fifth Amendment as to certain matters, but not the
11 Fifth Amendment as to all matters, that if he is
12 going to take the stand and testify as to certain
13 matters relative to this case, the Government has no
14 objection to his testifying on that basis. He could
15 then take the Fifth Amendment as to any questions
16 about a pending matter elsewhere. That is not my
17 concern. My concern is with a witness taking the
18 stand and taking the Fifth Amendment to every
19 question propounded to him.

20 THE COURT: He has a right to take the stand
21 in his own behalf. If there is any matter which he
22 thinks may incriminate him or affect some judgment
23 or pending proceeding in another court, he has a
24 right not to testify.

25 MR. LEVIN-EPSTEIN: Exactly.

1 6 Nierenberg-direct
2 there come a time just before entering the bank when you
3 noticed anything unusual?

4 A Yes.

5 Q Would you tell the jury, please, what it was
6 that you saw.

7 A I noticed a medallion cab on the corner of 81st
8 and Flatlands --

9 Q I am sorry, were you finished?

10 A -- by a pump.

11 Q What color was that cab?

12 A It was a yellow medallion cab.

13 Q Do you recall what kind of automobile it was,
14 what make or model?

15 A No.

16 Q Did you notice anything specific about this
17 cab?

18 A There were two males sitting in the cab.

19 Q Do you know of what race they were?

20 A They were negro.

21 A I'm sorry?

22 A They were black.

23 Q How were they seated in the car?

24 A One was the driver and one was the passenger.

25 Q Let me finish my question, okay. Did you have

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Nierenberg-direct

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occasion to look at the side or the door panel of this cab?

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A Yes.

4

Q Did you notice anything specific about the door

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panel or the cab.

6

A It had HEW Cab Company on it.

7

Q When you say HEW?

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A H E W.

9

Q The letters H E W?

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A Yes.

11

Q What, Mr. Nierenberg, drew your attention to

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this cab?

13

A We had been having trouble in the area by the

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kids in the schoolyard --

15

MS. MOSKOWITZ: Objection.

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MR. CORBETT: Objection.

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THE COURT: Sustained.

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MR. LEVIN-EPSTEIN: I will try to rephrase my

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question.

20

Q Specifically, without explaining any narrative,

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can you tell the jury what it was about the cab, that speci-

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fically drew your attention to it?

23

A I thought they were police.

24

MS. MOSKOWITZ: Objection, I ask that it be

25

stricken.

8

THE COURT: I will allow it to stand. Go

ahead.

Q You stated you thought they were policemen in the cab, you noticed the cab because of that, right?

A Right.

Q After you saw these two men, these negro males in the cab, the HEW cab, what did you do then, if anything?

A I went into the bank.

Q In order to conduct your business?

A Right.

Q Where did you go in the bank?

A I waited on line.

Q How long were you waiting on line to do your business?

A Maybe five minutes.

Q What happened then, sir?

A The bank was robbed.

Q Specifically, can you tell this jury, to the best of your recollection, what happened that morning of July 15th?

A Two men came into the bank, one stood in the middle of the bank floor and the other one jumped over the tellers' window.

JB:GA
T2R1PM

Nierenberg - direct

A 68 189

Q Can you describe as best you can recall -- With-
drawn.

Were either of the men carrying anything as they
came into the bank?

A One was carrying a rifle.

Q Which one was that, sir?

A The one who stood in the middle of the floor.

MR. CORBETT: I am sorry. The witness --

THE COURT: The one who stood in the middle of
the floor.

Q Mr. Nierenberg, you must keep your voice up. It
is a very large room, and we are all spread out. So please
try and project as much as possible. All right?

Thank you.

Now, my last question was, which one was carry-
ing the weapon.

A The one who stood in the middle of the bank floor.

MR. LEVIN-EPSTEIN: Mr. Corbett, is that all
right?

MR. CORBETT: His voice dropped. I am sorry.

He mumbled at the end.

Q You must enunciate every word so that the Stenog-
rapher, Mr. Nierenberg, can take down everything you say, and
every member of the jury can hear every word.

All right. Okay.

Nierenberg - direct

190

Now, once again, for Mr. Corbett's benefit, which one of the men was carrying a gun?

A The one who stood in the middle of the bank floor.

Q What did the other man do after the man with the gun went to the middle of the bank floor?

A He jumped over the teller's window.

Q Did you observe this?

A Yes.

Q Approximately how far would you say you were from the man that carried the gun and stood in the middle of the floor?

A Ten to fifteen feet.

Q Could you see his face, sir?

A No.

Q Why not?

A It was covered.

Q With what? Do you know?

A I don't recall. I know there was something covering him.

Q Do you know what race the man with the gun was?

A Negro.

Q How do you know that, sir?

A Well, all of his face wasn't covered.

Nierenberg - direct

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2 Q There was a portion of his face that was covered?

3 A Yes.

4 Q What portion of his face was uncovered? Do you
5 recall?

6 A Most of it. Just like, you know, the top, up,
7 wasn't covered.

8 Q When the man with the gun came into the bank
9 with this companion, did either of them say anything out loud
10 as soon as they came in, that you heard?

11 A If I recall right, he says, "Nobody move. This
12 is a stickup."

13 Q Who said that?

14 A The one with the gun.

15 Q What did the second man do at that point?

16 A He jumped over the teller's window.

17 Q Did you watch him go over the teller's counter?

18 A Yes.

19 Q Approximately how far from that man were you?

20 A A couple of feet.

21 Q What happened after the second man went over the
22 teller's counter -- went over the counter? What did he do, if
23 anything?

24 A He started taking the money out of the drawers.

25 Q What happened then?

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A Then he asked where the rest of the money was.

Q Can you tell the jury, please, if you know, of whom he was addressing those remarks, "Where is the rest of the money," or words --

A To the teller.

Q I am sorry.

A To the teller.

Q Do you know that teller?

A Yes.

Q How long prior to July 15th of 1974 had you been banking at the First National City Bank?

A Since it was -- Since the branch opened.

Q Approximately how long was that, sir?

A I don't recall.

Q Well, is it about a year?

A No. The branch wasn't open that long.

Q Okay. Had you dealt with that particular teller before?

A Yes.

Q Do you know her name?

A Yes.

Q Would you tell the jury, please, what her name is?

A Her first name is Gail. I don't remember her last name.

Nierenberg - direct

1 THE WITNESS: Correct.

2
3 THE COURT: When you were asked that, did you
4 then select one?

5 THE WITNESS: Correct.

6 THE COURT: Did you take that one and do some-
7 thing with it?

8 THE WITNESS: I initialed it. I initialed all
9 of them.

10 THE COURT: Now, I ask you to pick up that photo-
11 graph, and look at the back of it. Is that the one --
12 Is that the one you initialed?

13 THE WITNESS: Correct.

14 THE COURT: All right, mark it in evidence.

15 THE CLERK: Government Exhibit 1-F, previously
16 marked for identification, marked in evidence.

*** 17 MR. LEVIN-EPSTEIN: Thank you.

18 Your Honor, may I pass the photograph among the
19 jury?

20 THE COURT: You may.

21 MR. LEVIN-EPSTEIN: Mr. Foreman, pass it around.

22 THE FOREMAN: Thank you.

23 Q Mr. Nierenberg, based upon your independent re-
24 collection of the man in the taxicab, and of the circumstances
25 and events of that day, can you look around this courtroom and

Nierenberg - direct.

1
2 point out, if you can, the man that you saw on that date? Can
3 you do that, sir?

4 A Over there.

5 Q You will have to speak up.

6 A Right over here.

7 THE COURT: All right. Identify him. What is
8 he wearing? What does he look like?

9 THE WITNESS: Green jacket. Hair is very short.

10 Q Are you -- There are four people sitting at that
11 table. Which of the four people are you pointing to?

12 A The one over to the left.

13 MR. LEVIN-EPSTEIN: May the record indicate the
14 defendant Virgil Rivers, Jr.?

15 THE COURT: Please rise, Mr. Rivers.

16 MR. RIVERS: Yes.

17 MR. LEVIN-EPSTEIN: Your Honor, I have no further
18 questions of Mr. Nierenberg.

19 CROSS EXAMINATION

20 BY MS. MOSKOWITZ:

21 Q Mr. Nierenberg, this incident took place almost
22 one year ago; is that correct?

23 A Correct.

24 Q And some time shortly after the incident you were
25 shown several pictures, including the picture that is now in

1
2 THE COURT: Do not take the stand though,
3 Mr. Levin-Epstein.

4 MR. LEVIN-EPSTEIN: Your Honor, I do not know
5 anything about the case myself.

6 BY MR. LEVIN-EPSTEIN:

7 Q In the car in your traveling from the 112th
8 Precinct with Mr. Rivers to the FBI building, did he say,
9 "Stop the car. I have got to make a call"?

10 A No, sir.

11 Q Did he say, "Stop the car. I have got to see
12 my lawyer"?

13 A No, sir.

14 Q Did he say, "Stop the car. I can't talk to
15 you"?

16 A No, sir.

17 Q Did he say anything like that at all?

18 A No, sir.

19 Q Did you say to him, "Mr. Rivers, you have got to
20 stop to talk to your lawyer"?

21 A No, sir.

22 Q But you advised of his right to a lawyer, did
23 you not?

24 A Yes, sir.

25 Q How many times?

Augustitis-redirect

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A Three times.

3

Q Let's see, Government's Exhibit 6 in Evidence,

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that is one advice of rights, is it not?

5

A Yes, sir.

6

Q Signed by Mr. Rivers?

7

A Yes, sir.

8

Q And Government's Exhibit 7 in Evidence, that's

9

another advice of rights signed by Mr. Rivers, right?

10

A Yes, sir.

11

Q And again Government's Exhibit 7, there is a

12

third advice of rights signed by Mr. Rivers? Right?

13

A Yes, sir.

14

Q Government's Exhibit 7 again, there is a fourth

15

advice of rights that Mr. Rivers signed, is that right?

16

A Yes, sir.

17

Q You also testified, did you not, that you

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orally advised him of his rights, is that right?

19

A Yes, sir.

20

MR. CORBETT: I wish at this time you wouldn't

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lead. I will join in that objection. Now, if he

22

wants to take the stand --

23

THE COURT: Did you give him advice of rights

24

orally.

25

Q Did you give him his advice of rights at each of

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2 these times that I mentioned?

3 A Yes.

4 Q And did he acknowledge in a manner of some sort
5 each time?

6 A Yes, sir.

7 Q Did there come a time when he acknowledged
8 advice of rights in writing on any of these occasions?

9 A Yes, sir.

10 Q How many times did he acknowledge his advice
11 of rights in writing?

12 A The interrogation advice of rights form twice.

13 Q That is where the rights appear?

14 A Yes, sir.

15 Q Go on.

16 MR. LEVIN-EPSTEIN: Let me rephrase the ques-
17 tion.

18 Q Did he also sign those two statements in your
19 presence?

20 A Yes, sir.

21 Q You advised him orally of his rights as well?

22 A Yes, sir.

23 Q Did he acknowledge his advice of rights orally?

24 A Yes, sir.

25 Q How did he do that?

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A Stated that he understood his rights.

Q Now, Miss Moskowitz has made quite a point of
the fact --

MISS MOSKOWITZ: Objection.

MR. CORBETT: Objection.

THE COURT: Sustained. No comment.

MR. LEVIN-EPSTEIN: I withdraw that.

Q You were asked on cross-examination whether
in Government's Exhibit 7 in Evidence the writing was in your
handwriting, is that right?

A Yes, sir.

Q You said it was?

A Yes, sir.

Q And you were asked on cross-examination -- and
I am paraphrasing now, your Honor because I do not recall
exactly the words -- but if I am wrong I am sure counsel will
correct me, you were asked and did Virgil Rivers use the
words, "I have been advised that I am being questioned
concerning July 15..." et cetera. You were asked whether
those were his words and you said no. Right? Is that
correct?

A Yes, I believe so, yes.

Q So there is no question but that you wrote this
down?

1
2 MR. CORBETT: I object to this.

3 THE COURT: He has admitted it. I do not see
4 why you are questioning him about it.

5 MR. LEVIN-EPSTEIN: I am developing something,
6 your Honor.

7 MISS MOSKOWITZ: I do not think it is proper
8 redirect. I didn't question him about that. In fact,
9 I think I brought out that he wrote that.

10 MR. LEVIN-EPSTEIN: That's exactly my point.

11 Q And after you wrote it, Agent Augustitis, did
12 someone sign it?

13 A Yes.

14 Q Who signed it?

15 A Virgil P. Rivers, Jr.

16 Q Someone signed their name as a witness?

17 A Yes, sir.

18 Q By whom?

19 A Myself.

20 Q There is initials on the corners of these pages,
21 are there not --

22 THE COURT: We have gone through all that with
23 this witness.

24 MR. LEVIN-EPSTEIN: Yes, I think you are right,
25 your Honor.

1
2 THE COURT: It is part of it. There is no need
3 of cluttering the record.

4 MISS MOSKOWITZ: I have just about two or three
5 questions.

6 MR.LEVIN-EPSTEIN: Miss Moskowitz, I am not
7 finished.

8 MISS MOSKOWITZ: Excuse me.

9 BY MR. LEVIN-EPSTEIN:

10 Q When you presented the signed statement to
11 Mr. Rivers did he say to you that that is not my words. I
12 won't sign that the way it is?

13 MR. CORBETT: I object to the form of that
14 question.

15 THE COURT: Yes, the form is bad.

16 MR. LEVIN-EPSTEIN: I will rephrase the ques-
17 tion.

18 Q Did he say to you, "I won't sign that"?

19 A No, sir.

20 Q Did he give you any suggestions or modifications
21 for the statement as it appears?

22 MISS MOSKOWITZ: Objection.

23 THE COURT: I don't think that's the fact.

24 Q Let me ask you this question then, I ask you
25 to look at Government's Exhibit 7 in Evidence, in the hand-

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

EVELYN COHEN -----, being duly sworn, says that on the 17th-----
day of October, 1975, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a Government's Appendix-----
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

Ruth E. Moskowitz, Esq.
225 Broadway
New York, N.Y. 10007

John C. Corbett, Esq.
66 Court Street
Brooklyn, N.Y. 11201

Sworn to before me this
17th day of Oct. 1975

Martha Sharp

Evelyn Cohen

MARTHA SHARP
Notary Public, State of New York
No. 42,142,120
Qualified in Kings County
Commission Expires March 31, 1976